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## Which future for EU-Swiss relations? A citizens' perspective

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The relations between the European Union (EU) and the non-member state Switzerland are based on many international agreements. The EU is increasingly dissatisfied with this patchwork approach and wishes a formalisation of the relationship. But Swiss citizens and politicians are in difficulty to form a coherent position about this request. They both favour the agreement-based relations with the EU but oppose migration and subordination to international institutions.

### Introduction

For more than two decades, a patchwork of EU-Swiss agreements has provided Swiss citizens and politicians with a comfortable situation: Switzerland has benefited from important aspects of European integration, while conserving its political and legal autonomy as a non-member state of the EU.

In recent years, the situation has lost many comfortable aspects. Since 2008, the EU has

been calling for an institutional framework that would formalise Switzerland's sectoral access to the EU's single market. In 2014, the EU and Switzerland started to negotiate the issue. The EU has refused to sign new market access agreements until such a framework is agreed. After political developments this summer in Switzerland, it looks like an agreement will be postponed once again.

The state of EU-Swiss relations is ambiguous. The ambiguity is mostly owed to the difficulty to assess costs and benefits of the EU-Swiss agreements and an institutional framework. But it is also owed to the behaviour of political actors.

Regardless of the alleged negotiation stalemate, the EU agreed to sign or update agreements, some of minor overall weight, but still important for the job or life situation of citizens. The Swiss government clumsily communicated its

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negotiation strategy. It repeatedly announced “red lines” and “deadlines” only to call into question the first and let the second pass by without a comment. The unclear outcome of Brexit negotiations does not provide orientation neither.

The ambiguous situation makes prospects for the future unclear and political decisions a challenge.

### **Upcoming popular votes**

The prospects for the future of EU-Swiss relations significantly depend on the decisions of Swiss citizens, while the citizen's perspective deserves a closer look. Switzerland has a direct democracy, in which many bills adopted by parliament, including federal laws and international agreements, can be challenged in popular referendums. In addition, Swiss citizens can propose constitutional amendments that must be brought to the polls. This practice is called “popular initiative”.

Several upcoming popular votes may influence in some way or another the prospects of EU-Swiss relations.

On 25 November 2018, Swiss voters decide on a popular initiative that would enshrine the primacy of federal law over international law in the Swiss constitution. An approval of this initiative would radically change Swiss legal practice and would worsen EU-Swiss relations. Even though the initiative does not openly call into question agreements with the EU, a citizen

must take into account these agreements for her or his vote.

Recently, the EU has shown increasing willingness to sanction Switzerland for disagreeable behaviour. In 2014, the EU kicked Switzerland out of the framework program for research Horizon 2020 after a tiny majority of Swiss voters approved a popular initiative aiming at re-introducing migration controls also for EU nationals. The EU's sanctions underlined its position to refuse any restrictions of the free-movement-of-persons principle.

In December 2017, the EU limited the recognition of the equivalence of Swiss stock-market regulation to one year. An extension of the recognition, granted for an unlimited period to countries such as the USA or Canada, is conditional on “significant progress” in negotiations of the institutional framework.

These sanctions do not make EU-Swiss relations less ambiguous. In case of the migration controls, the Swiss parliament came up with an only partial implementation of the initiative that did not violate the agreement on the free movement of persons. As a result, Switzerland was re-admitted to Horizon2020 in 2017. In case of the stock-market regulation, the sanction was meant to frighten, but not yet to hurt, as for 2018, the equivalence was recognised.

Other upcoming votes openly concern EU-Swiss agreements. Most likely, there will be a referendum on the transposition of the EU's new directive on firearms. It is part of the

Schengen legislation, which Switzerland is obliged to transpose. Otherwise, the EU can terminate Switzerland's Schengen association. If a Swiss citizen opposes the new firearms regulations, he or she must weigh this preference against the Schengen association as a whole.

This August, the Swiss People's Party (SVP) launched a popular initiative to abolish free movement of persons with the EU. The popular vote will not take place before 2020. Unlike the initiative on the re-introduction of migration controls of 2014, the new initiative is clear in its aim to abrogate the respective agreement with the EU.

This does not make the decision easier for a citizen. A majority of Swiss citizens is critical of immigration, including immigration from the EU. But there is also a majority that favours an open economy and access to the EU's Single Market, including EU-Swiss agreements (Golder et al. 2017). The two groups are at least partially overlapping.

### **Switzerland's access to the Single Market**

This puts the concerned citizens in a difficult situation, as the EU-Swiss agreement on the free movement of persons (FMPA) is legally linked to six other agreements called "Bilaterals I" that would be terminated together with the FMPA, among them important market access agreements (Dupont and Sciarini 2007).

Switzerland's sectoral access to the EU market covers parts of all four freedoms (goods,

persons, services, capital), while none of the freedoms is realised to the same degree as in the EU.

The free movement of persons is liberalised almost to the same degree as in the EU, with the exception that Swiss citizens are not Union citizens and do not have political rights. Moreover, Switzerland introduced labour market regulations to protect the domestic workforce against wage and social dumping (so-called "flanking measures"). With regard to their aims, they resemble the new posting of workers directive of the EU, but the EU criticises the instruments as too demanding and thus discriminatory.

The free movement of goods is not generally liberalised, mainly because Switzerland is not a member of the customs union and important principles like the Cassis de Dijon ruling naturally do not apply to the non-member state Switzerland.

But trade in goods is facilitated by various agreements, starting with the 1972 EU-Swiss free trade agreement (FTA) covering industrial goods. Thanks to the FTA, Swiss firms benefit from tariff reductions for almost all their exports to the EU (SECO 2016). With the Bilaterals I, trade was further liberalised through agreements on the mutual recognition of conformity assessments (MRA), on public procurement and on trade in processed agricultural goods.

The free movement of services is not generally liberalised. Aspects of it are guaranteed by an agreement for the insurance sector (1992), by the public procurement agreement and the agreement on the free movement of persons (both 2002 as parts of Bilaterals I).

The free movement of capital is not liberalised, mainly because Switzerland only has minimal regulations of capital movement.

According to the Swiss government, Switzerland's access to the EU's single market goes beyond the trade liberalisation that a free trade agreement usually provides (Bundesrat 2015). For example, recognition of conformity assessments normally is not included, but is one of the cornerstones of EU-Swiss trade. In 2016, 69% of Swiss exports to the EU and 61% of Swiss imports from the EU did not require a second conformity assessment in the EU or Switzerland, respectively (SECO 2017). As two thirds of Swiss exports go to the EU, this figure has considerable economic weight.

### **In search of an institutional framework**

The maintenance of the current scope of market access and its extension do not only depend on the continuation of the free movement of persons. They are also linked to the institutional framework that the EU and Switzerland are currently negotiating.

The institutional framework is aimed to provide rules for the update of EU-Swiss agreements to changing EU legislation and a dispute settlement mechanism. According to the current state of

negotiations, the framework will apply to five existing and all future market access agreements. These agreements are based on EU legislation (Epiney et al. 2012, Tobler 2008). Empirical research showed that they are among the most often updated agreements (Jenni 2016).

The stumbling blocks in the negotiations are Swiss labour market regulations, the so-called "flanking measures", and Swiss cantonal tax regimes. The EU criticises both as discriminatory and would like to introduce respective rules in the framework agreement.

In the case of the labour market regulations, this could open the door for a decision of the European Court of Justice (ECJ) weakening the "flanking measures". The ECJ most likely will have to be consulted by an arbitration court foreseen for dispute settlement by the institutional framework.

In case of tax regimes, the EU would like to include its state-aid principles in the institutional framework. Switzerland is reluctant to accept this, as nowadays, it has only loose state-aid regulation and an adoption of the EU principles would call into question not only tax regimes, but for example also the ownership structures of semi-public so-called cantonal banks.

According to an online survey conducted in June 2018, support for an institutional framework agreement is growing among Swiss citizens and slightly outnumbers opposition (e.g. Schäfer 2018). But these results have to be interpreted

cautiously, as the survey was conducted before the trade unions announced their categorical opposition to any changes to the “flanking measures” later this summer. This risks to diminish support, as support is strongest among left-wing voters who also care most about the “flanking measures”.

## Conclusion

Currently, for a Swiss citizen many concrete policy issues seem to be potentially linked to the fate of EU-Swiss relations as a whole. Although labour market regulations are related to the institutional framework and firearms regulations to the Schengen association, it is very difficult to foresee how the EU would react to disagreeable decisions.

While policies are interrelated everywhere, Swiss citizens are in a particular situation. They lack direct representation and voting rights on the EU level, but are frequently asked to express their policy preferences in domestic popular votes. Due to the ambiguous behaviour and announcements of political actors, the domestic effect of a vote often seems clearer than its potential effect on EU-Swiss relations. It is important to remember that there have not been any popular votes directly on an EU-Swiss agreement since 2009.

The Swiss government and the largest political parties have not been of great aid for Swiss citizens. For institutional and personal reasons, the Swiss government is better equipped for the role of a mediator than of a leader. For reasons

of polarisation and competition for voters, the largest parties muddle through the topics of migration and EU-Swiss relations without providing visions of future EU-Swiss relations that could help citizens to form a more coherent position on both issues.

The exception is the EU-sceptical SVP, which is clearly against an institutional framework. Even the social democrats, the most reliable pro-European party in Switzerland, have wavered in their support of an institutional framework agreement since the labour market regulations – their most important political achievement in decades – have been on the negotiation table.

The situation may become clearer when the Swiss electorate gets the chance to vote on concrete EU-Swiss agreements. The next chances will be a referendum on an institutional framework (if agreed) and the popular initiative demanding the abolishment of the free movement of persons. Both votes will most likely not take place before 2020.

Before then, the Swiss government has no choice but to manoeuvre avoiding an escalation of conflict with the EU while continuing the search for a domestic and international compromise. Swiss citizens are used to such situations. In the past, negotiation stalemates had only limited negative consequences and sooner or later a window of opportunity for a new rapprochement opened. In the meantime, Switzerland's wealth makes patience affordable.

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